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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.14 of 2007

APPELLANT (Defendant) — Vallabhdas Nemichand Bawariya, aged about 78 years, son of Nemichand, through Maharashtra Saree Store, Sadar Bazar, Raipur.

Versus

RESPONDENT (Plaintiff) — Rameshchand Pandey, aged about 58 years, son of Mannuram Pandey, resident of House No.29, Vallabh Housing Society, Vallabh Nagar, Raipur.

Appeal Under Section 100 of Code of Civil Procedure,1908

Present :
Shri B.P. Sharma, counsel for the appellant/defendant.

ORAL ORDER
(Passed on 28th November, 2007)

Learned counsel for the appellant submitted that due to a typographical error in the cause title, the word 'appellant/plaintiff' has appeared whereas it ought to have been 'appellant/defendant' and prays for permission of this Court to correct the typographical error in the Court. Permission granted. The error be corrected now.

2. Heard on admission.

3. The appellant/defendant is aggrieved by the judgment and decree dated 29-06-2006 in Civil Appeal No.15-A/2004 passed by IXth Additional District Judge, F.T.C., Raipur where by the judgment and decree dated 12-07-2001 in Civil Suit No.17-A/1995 passed by 1st Civil Judge, Class-I, Raipur for specific performance of contract was affirmed.

4. It is not disputed by the learned counsel for the appellant that the appellant/defendant agreed to sell the suit house to the respondent/plaintiff and had received a sum of Rs.21,500/- as shown in Ex.P-17. It is also not disputed that the respondent/plaintiff was

put in possession of the suit accommodation on 13-01-1973 by the appellant/defendant and continues to be in possession thereof.

5. Shri B.P. Sharma, learned counsel for the appellant/defendant has assailed the impugned judgment and decree mainly on the ground that there was no consensus ad-idem between the parties over a concluded oral agreement because while the respondent/plaintiff contended that the appellant/defendant had agreed to sell the suit accommodation for a consideration of Rs.21,500/- the appellant/defendant had pleaded that the consideration was Rs.40,000/-. Heavy reliance was placed on ***Brij Mohan and others vs. Sugra Begum and others,*** reported in (1990) 4 SCC 147. It was also argued that both the Courts below were not justified in granting equitable relief for specific performance of contract in view of the specific term embodied in the mortgage deed that the suit house shall not be transferred without the previous permission in writing of the Housing Board.

6. Having heard the learned counsel for the appellant/defendant, I have perused the record of Civil Suit No.17-A/1995. Both the Courts below were justified in recording a finding that the appellant/defendant had failed to prove that the sale consideration was Rs.40,000/-. As regards the other ground urged by the learned counsel for the appellant/defendant is concerned, Ex. D-2 shows that prior to the agreement dated 13-1-1973 the loan of Rs.20,000/- advanced by the Housing Board in August,1970 was paid in full by the appellant/defendant vide receipts D-3 for Rs.10,000/- on 28-10-1970, Ex. D-4 for Rs.6000/- on 2.2.1971 and Ex. D-5 for Rs.4,000/- on 7-5-1971. The respondent/plaintiff is admittedly in possession of the suit accommodation since 13-7-1973. I am of the considered opinion that the discretion exercised by both the Courts below in granting a decree for specific performance of contract is a sound discretion exercised on proper appreciation of evidence oral as well as documentary.

7. In this view of the matter no substantial question of law arises for determination in this appeal which is accordingly dismissed at the stage of admission.

8. Consequently, M.(C.) P. No.253/2007 which is an application for grant of stay also stands dismissed. Interim stay granted on 05-11-2007 stands vacated.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr